

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

MERRIMACK VALLEY SCHOOL DISTRICT

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RAS 275: 443 V unpaid personal and sick time

Employer: Merrimack Valley School District, 105 Community Dr., Penacook, NH
03301

Date of Hearing: December 1, 2014

Case No. 48949

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 26, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on November 6, 2014. The Wage Claim is for \$1,727.97 in accrued but unpaid time.

The claimant testified that when his contract was not renewed for the 2014-2015 school year, he had 3 personal days and 12.97 sick days on the books. The claimant stated that it had never been explained to him that if his contract was not renewed he would lose this time. The claimant has a hiring contract and there is a Collective Bargaining Agreement in place. The claimant does not know of any other teachers that received this time upon separation.

The employer testified that, as a teacher, the claimant did not accrue vacation time. He did have personal days and sick days to use during his employment. There have been no previous payouts of this time and the Collective Bargaining Agreement is silent on these issues.

The employer maintains that the claimant is not eligible for any payout. This is a practice of the school district and not a written policy. The only time that a separation payout is brought up is when an employee has over fifteen years of service.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places issues such as personal time and sick time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant did say that he was holding on to the time and did not use it during the course of the school year. This was a choice made by the claimant and does not mean if the time is not used, it is paid out.

The employer was credible in their testimony that the practice was not to pay out this leave if an employee separates from employment. There is a bargaining agreement in place but it does not address the issue. The "past practice" is the issue in this Wage Claim.

The claimant did not use the time during his employment and so it is lost upon separation. The Wage Claim is invalid.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: December 12, 2014

TFH/slh